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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
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10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 JOSE URIOSTIGUE-BAENA,

14 Defendant.  
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Case No. 2:04-CR-0433-KJD-RJJ

**ORDER**

16 Presently before the Court is Defendant's Motion for Sentence Adjustment (#65). The  
17 Government filed a response in opposition (#66). Defendant seeks to have his sentence adjusted  
18 asserting that his status as a deportable alien makes his imprisonment more severe because he is  
19 ineligible to be released to a halfway house or residential drug abuse program.

20 The Court must deny the motion. First, Defendant was sentenced to a seventy (70) month  
21 term of incarceration in July 2005. Therefore, his motion is likely moot as he has already been  
22 released. Second, the Court is without authority to modify his term of imprisonment. See United  
23 States v. Smart, 129 F.3d 539, 540-41 (10th Cir. 1997); 18 U.S.C. § 3582(c). Third, the Ninth  
24 Circuit Court of Appeals has rejected this Equal Protection argument. See de Jesus Melendez v.  
25 Gonzalez, 503 F.3d 1019 (9th Cir. 2007). Finally, if brought under 28 U.S.C. § 2255, Defendant's  
26 claim is time-barred.

1           Accordingly, IT IS HEREBY ORDERED that Defendant's Motion for Sentence Adjustment  
2 (#65) is **DENIED**.

3           DATED this 4th day of April 2013.

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8 Kent J. Dawson  
9 United States District Judge  
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